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NFIPM Section 4 (U) The Domain Program and Certain Statute and Treaty Based Investigations

Section 4-01 (U) The Domain Program

Superseded by Corporate Policy Directive #0309D, titled "Counterintelligence Division Policy Implementation Guide", dated 08/09/2010.

Eff. Date: 08/09/2010

Section 4-02 (U) Foreign Agents Registration Act (FARA) Investigations

Superseded by Corporate Policy Directive #0309D, titled "Counterintelligence Division Policy Implementation Guide", dated 08/09/2010.

Eff. Date: 08/09/2010

Section 4-03 (U) Agents of Foreign Governments Investigations

Superseded by Corporate Policy Directive #0309D, titled "Counterintelligence Division Policy Implementation Guide", dated 08/09/2010.

Eff. Date: 08/09/2010

Section 4-04 Internal Security Act of 1950 Investigations

DELETED – Corporate Policy Office's (CPO) review of NFIPM on 09/24/2010 identified that this is no longer policy.

Section 4-05 (U) Intelligence Identities Protection Act Investigations

A. (U) The Intelligence Identities Protection Act prohibits a person who has authorized access to classified information, which information identifies a covert agent, from intentionally disclosing such information to a person who is not authorized to receive classified information--if it is known that the disclosed information identifies the covert agent; and if it is known that the United States is actively seeking to conceal the agent's intelligence relationship. Criminal penalties attach to violations of this requirement; i.e., a fine of not more than \$50,000, and/or a term of imprisonment of not more than ten years. See: Title 50, U.S. Code, Section 421(a).

B. (U) The Act further prohibits a person who, as a result of having authorized access to classified information, from intentionally disclosing information identifying a covert agent to a person who is unauthorized to receive classified information--if it is known that the disclosed information does identify the covert agent; and if it is known that the United States is actively seeking to conceal the agent's intelligence relationship. Criminal penalties attach to violations of

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this requirement; i.e., a fine of not more than \$25,000 and/or a term of imprisonment of not more than five years. See: id. Section 421(b).

C. (U) And, finally, the Act prohibits a person from disclosing information which identifies a covert agent to any person who is not authorized to receive classified information--if the offender has engaged in a pattern of activities which were intended to expose the agent; if he/she had reason to believe that such activities would impair or impede U.S. foreign intelligence efforts; if he/she knows that the information identifies the agent; and if he/she knows that the United States is actively seeking to conceal the agent's intelligence relationship. Criminal penalties attach to violations of this requirement; i.e.: a fine of not more than \$15,000 and/or a term of imprisonment of not more than three years. See: id. Section 421(c).

1. This pertains to a person who, even though he/she does not have access to classified information, seeks to disclose the identity of an agent. Legislative history makes it clear that, in order for such a person to be found guilty, he/she must have consciously sought to identify and expose an undercover intelligence operative, with reason to believe that such conduct would impair U.S. intelligence efforts. See: 128 Congressional Record H2448 (daily ed. May 20, 1982).

D. (U) A covert agent, for purposes of the Act, is:

1. An officer or employee of a U.S. Intelligence Community agency, or a member of the U.S. Armed Forces detailed to such an agency, whose identity as an officer, employee or detailee is classified, and who is serving overseas, or who has served overseas within the last five years; or
2. A U.S. citizen whose intelligence relationship with a U.S. Intelligence Community agency is classified, who resides and acts outside the United States as an Asset to a U.S. Intelligence Community agency, or who at the time of the disclosure, is acting as an FBI Asset; or
3. A non-U.S. citizen whose past or present intelligence relationship is classified, and who is a present or former agent of, or a present or former informant or source of operational assistance to an intelligence agency. See: Title 50, U.S. Code, Section 426(4).

E. (U) It is a defense if the Asset has previously been acknowledged and revealed by the United States; the disclosure is to the Senate Select Committee on Intelligence, or the House Permanent Select Committee on Intelligence; or the person making the disclosure about an Asset is the Asset him/herself. See: id. Section 422.

F. (U) Legislative history indicates that the Act seeks to prevent the activities of persons who are committed to disclosing the identities of multiple covert agents; that is, people who make it their business to ferret out and to publish the identities of agents, "time and time again." The Act is not intended to affect the First Amendment rights of persons who disclose the identities of agents "as an integral part of another enterprise such as news media reporting of intelligence failures or abuses, academic studies of U.S. Government policies and programs, or a private organization's enforcement of its internal rules." See: 128 Congressional Record H2448 (daily ed. May 20, 1982). All investigations under this statute require FBI Headquarters authorization.

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Section 4-06 (U) Registration of Persons Trained in Foreign Espionage Systems Investigations

Superseded by Corporate Policy Directive #0309D, titled "Counterintelligence Division Policy Implementation Guide", dated 08/09/2010.

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Section 4-07 (U) Arms Control Treaty Matter Investigations.

A. (U) Most arms control treaties contain provisions whereby Parties may approve or reject proposed additions to approved treaty inspector lists, in accordance with specific criteria. The FBI participates in this process, by conducting FBI [redacted] and in accordance with each treaty's specific criteria, the FBI may recommend [redacted]

[redacted] Grounds for exclusion vary from treaty to treaty: under the CWC, proposed inspectors may be objected to without explanation; under START, proposed inspectors may be objected to only by virtue of having been indicted or convicted of a criminal offense in the inspected party's territory; or previously expelled by the inspecting party.

1. (U) Military Counterintelligence Service elements' activities are strictly limited with respect to off-base activities, and non-military personnel. Therefore, except for counterintelligence coverage relating to official inspection activities at DOD sites, and sensitive projects (at any locations) over which DOD has overriding proprietary interests, the FBI should never take a secondary role to military counterintelligence.

2. The United States is permitted one designated Portal Perimeter Continuous Monitoring (PPCM) site under the START treaty, located in Votkinsk, Russia. [redacted]

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3. In July, 2002 an amendment to the CWCIA exempted the FBI from a mandatory presence at CWC inspection activities at DOD chemical weapons destruction sites.

4. [redacted] is viewed as the primary issue raised by the presence of OPCW inspectors at U.S. commercial chemical facilities. This threat to U.S. confidential business information and trade secrets is potentially significant, as the U.S. chemical industry is the largest in the world. According to the Department of Commerce, the U.S. chemical industry is the United States' largest exporting sector. The threat to U.S. chemical industry confidential business information and trade secrets is greatest from countries with emerging and competing chemical industries, some of whose citizens are employed by the OPCW in various capacities, including as inspectors.

5. [redacted] criminal investigations regarding OPCW inspectors or persons coming into contact with them may be opened under substantive National Foreign Intelligence Program or criminal investigative classifications given the appropriate predications.

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6. The short duration of CWC commercial inspections, which are restricted by treaty to 24 to 96 hours, depending on the type of inspection, is likely to limit the scope and duration of FBI investigative activities.

7. Each field office conducting [redacted] is requested to prepare a short summary communication to FBI headquarters under the file number [redacted]

8. Summary communications should be prepared following FBI participation in [redacted]

[redacted] Summary communications should be directed to the CWC Program Manager, FBI Headquarters, under file number [redacted]

B. The Treaty on Open Skies permits States Parties to conduct short-notice aerial observation overflights over the territory of other States Parties. These overflights are conducted in treaty-approved aircraft, equipped with sophisticated optical and video cameras, infrared scanners, and sideways-looking synthetic aperture sensors. Signed in 1992, the treaty has 27 original signatories, and the United States has ratified. The treaty has officially entered into force.

1. During Open Skies flights, signatories utilize treaty-approved observation aircraft and equipment, which are inspected by the inspected State Party prior to use. Inspectors are accompanied on board the aircraft by U.S. military personnel.

2. The United States is obligated to accept up to 42 overflights each year. No single State Party is permitted to use more than 50 per cent of the annual allotment of overflights for any country.

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C. The U.S. Government is in the process of evaluating potential counterintelligence issues arising from the adoption of more intrusive verification protocols, and is beginning to carry out training and planning events at potentially inspectable facilities. [REDACTED]

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D. In 1997, the IAEA Board of Governors adopted additional protocols requiring States Parties to the NPT, including nuclear weapons states, to submit expanded data declarations; to permit IAEA inspectors to take environmental samples to detect the presence of undeclared activities at or near declared nuclear sites; and to permit IAEA inspectors access to any place on a declared nuclear facility. The United States signed the U.S.-IAEA Additional Protocol in 1998; however, it has not yet been ratified. Upon ratification, the United States, as a nuclear weapon state, will voluntarily accept these new measures and provide access as required to declared facilities. The United States may refuse access to locations and information having direct National Security significance.

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